CROSS-WALK OF FEDERAL AND [INSERT STATE] CAFO NPDES REGULATIONS

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Federal Requirement/ Citation	State Citation	State Requirement	Comment
40 CFR PART 122 EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM			
40 CFR § 122.21 Application for a permit.			
122.21(a) *Duty to apply.* * * *			
122.21(a)(1) * * * The requirements for concentrated animal feeding operations are described in § 122.23(d).			
122.21(a)(2) * * * 122.(a)(2)(i) * * * Applications for EPA-issued permits must be submitted as follows:	33-16-03.1-07 Permit application content and procedures	1. Any new livestock facility or existing livestock facility that is proposing an increase in the number of livestock above the level allowed in the current permit or above the level at which a permit is required under section 33-16-03.1-05 shall apply for and obtain a state animal feeding operation permit or a North Dakota pollutant discharge elimination system permit prior to construction or expansion. Any livestock facility that is proposing to expand the production area, or update or change the manure handling system, and which requires a permit under section 33-16-03.1-05, shall apply for and obtain a state animal feeding operation permit or a North Dakota pollutant discharge elimination system permit prior to construction.	OK, 33-16-03.1-05 language is given in cell C85.
122.21(a)(2)(i)(A) All applicants, other than POTWs and TWTDS, must submit Form 1.	33-16-03.1-07 (4)	4. Application forms for state animal feeding operation permits are available from the department. ***	The general ND language says forms from the department. No idea what those forms look like.
* * *			
122.21(a)(2)(i)(C) Applicants for concentrated animal feeding operations or aquatic animal production facilities must submit Form 2B			
* * * * *			
122.21(i) * * * New and existing concentrated animal feeding operations. . . shall provide the following information to the Director, using the application form provided by the Director:	33-16-03.1-07 (4)	4. ***An operator shall furnish information requested by the department that is consistent with this chapter. The department will not process an application unless all of the necessary information is provided. The information within or attached to an application must include the following:	From section 4, immediately after the application form statement. OK
122.21(i)(1) For concentrated animal feeding operations:			
122.21(i)(1)(i) The name of the owner or operator;	33-16-03.1-07 (4)(a)	a. The owner's and operator's name and mailing addresses.	OK
122.21(i)(1)(ii) The facility location and mailing addresses;	33-16-03.1-07 (4)(b)	b. The facility's legal location and mailing address.	OK

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122.21(i)(1)(iii) Latitude and longitude of the production area (entrance to production area);			No requirement found for this.
122.21(i)(1)(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of this section;	33-16-03.1-07 (4)(c)	c. A topographic map of the area where the facility is or proposes to be located and showing the specific production area.	OK
122.21(i)(1)(v) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);	33-16-03.1-07 (4)(d)	d. Specific information about the number, size, and type of animals proposed for the facility; the number of days per year animals will be handled; and the type of confinement (open or housed under roof).	OK
122.21(i)(1)(vi) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage(tons/gallons);	33-16-03.1-07 (4)(e)	e. The type of containment and storage (anaerobic lagoon, roofed storage shed, ponds, under-floor pits, aboveground storage tanks, underground storage tanks, concrete pad, impervious soil pad, water spreading system, other) and total capacity for manure, litter, and process wastewater storage (tons or gallons), or other measures to meet department requirements to prevent discharge of pollutants to waters of the	OK
122.21(i)(1)(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;	33-16-03.1-07 (4)(f)	f. The total number of acres under control of the applicant and available for land application of manure, litter, or process wastewater.	OK
122.21(i)(1)(viii) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);	33-16-03.1-07 (4)(g)	g. Estimated amounts of manure, litter, and process wastewater generated per year (tons or gallons).	OK
122.21(i)(1)(ix) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons);	33-16-03.1-07 (4)(h)	h. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons or gallons).	OK
	33-16-03.1-07 (4)(i)	i. Designs, including location, for all manure storage and water pollution control structures and site-specific background information as specified in the North Dakota Livestock Program Design Manual. Design plans developed by anyone other than the facility owner must be signed by the engineer who prepared or supervised the preparation of the plans under North Dakota Century Code chapter 43-19.1.	
	33-16-03.1-07 (4)(j)	j. Site-specific information on topography, surface water, ground water, and soil geology.	

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122.21(i)(1)(x) A nutrient management plan that at a minimum satisfies the requirements specified in § 122.42(e), including, for all CAFOs subject to 40 CFR part 412, subpart C or subpart D, the requirements of 40 CFR 412.4(c), as applicable.	33-16-3.1-07(4)(k)	k. A nutrient management plan or information related to a nutrient management plan as specified in subsections 4 and 5 of section 33-16-03.1-08.	The general NMP section does not meet the CFR requirements.
	33-16-3.1-07(4)(l)	l. The signatures of individuals responsible for the animal feeding operation.	
	33-16-3.1-07(4)(m)	m. A description of how dead animals will be handled and disposed of by the facility operator. In preparing an application, the operator shall follow the North Dakota Livestock Program Design Manual. The operator of an existing animal feeding	There is no language on mortality management and disposal in the ND submission.
* * * * *			
40 CFR § 122.23 Concentrated animal feeding operations.			
122.23(a) *Scope.* Concentrated animal feeding operations (CAFOs), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.			This whole section needs to be done.
122.23(b) Definitions applicable to this section			
122.23(b)(1) *AFO* means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:			
122.23(b)(1)(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and			
122.23(b)(1)(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.			

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122.23(b)(2) *CAFO* means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.			
122.23(b)(3) *Land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.			
122.23(b)(4) *Large CAFO*. An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:			
122.23(b)(4)(i) 700 mature dairy cows, whether milked or dry;			
122.23(b)(4)(ii) 1,000 veal calves;			
122.23(b)(4)(iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;			
122.23(b)(4)(iv) 2,500 swine each weighing 55 pounds or more;			
122.23(b)(4)(v) 10,000 swine each weighing less than 55 pounds;			
122.23(b)(4)(vi) 500 horses;			
122.23(b)(4)(vii) 10,000 sheep or lambs;			
122.23(b)(4)(viii) 55,000 turkeys;			
122.23(b)(4)(ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;			
122.23(b)(4)(x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;			

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122.23(b)(4)(xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;			
122.23(b)(4)(xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or			
122.23(b)(4)(xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).			
122.23(b)(5) *Manure* includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.			
122.23(b)(6) *Medium CAFO* includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph 122.23(b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:			
122.23(b)(6)(i) The type and number of animals that it stables or confines falls within any of the following ranges:			
122.23(b)(6)(i)(A) 200 to 699 mature dairy cows, whether milked or dry;			
122.23(b)(6)(i)(B) 300 to 999 veal calves;			
122.23(b)(6)(i)(C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/ calf pairs;			
122.23(b)(6)(i)(D) 750 to 2,499 swine each weighing 55 pounds or more;			
122.23(b)(6)(i)(E) 3,000 to 9,999 swine each weighing less than 55 pounds; (F) 150 to 499 horses;			
122.23(b)(6)(i)(G) 3,000 to 9,999 sheep or lambs;			
122.23(b)(6)(i)(H) 16,500 to 54,999 turkeys;			
122.23(b)(6)(i)(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;			
122.23(b)(6)(i)(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;			
122.23(b)(6)(i)(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;			

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122.23(b)(6)(i)(L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or			
122.23(b)(6)(i)(M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and			
122.23(b)(6)(ii) Either one of the following conditions are met:			
122.23(b)(6)(ii)(A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or			
122.23(b)(6)(ii)(B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.			
122.23(b)(7) *Process wastewater* means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.			

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122.23(b)(8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.			
122.23(b)(9) *Small CAFO*. An AFO that is designated as a CAFO and is not a Medium CAFO.			
122.23(c) *How may an AFO be designated as a CAFO?* The appropriate authority (i.e., State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.			
122.23(c)(1) *Who may designate?*			

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122.23(c)(1)(i) Approved States. In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.			
122.23(c)(1)(ii) States with no approved program. The Regional Administrator may designate CAFOs in States that do not have an approved program and in Indian country where no entity has expressly demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.			
122.23(c)(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:			
122.23(c)(2)(i) The size of the AFO and the amount of wastes reaching waters of the United States;			
122.23(c)(2)(ii) The location of the AFO relative to waters of the United States;			
122.23(c)(2)(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;			
122.23(c)(2)(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and			
122.23(c)(2)(v) Other relevant factors.			
122.23(c)(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:			

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122.23(c)(3)(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or			
122.23(c)(3)(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.			
122.23(d) *NPDES permit authorization* ~~*Who must seek coverage under an NPDES permit?*~~			
122.23(d)(1) *Permit Requirement.* A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, the CAFO owner or perator must either apply for an individual NPDES permit or submit a notiec of intent for coverage under an NPDES general permit. ~~The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.~~	33-16-3.1-05	33-16-03.1-05. Operations requiring a permit. The operator of an animal feeding operation shall apply for a permit as follows: 1. Any animal feeding operation that has been defined as a concentrated animal feeding operation in section 33-16-03.1-03 or designated a concentrated animal feeding operation under section 33-16-03.1-04 must obtain a North Dakota pollutant discharge elimination system permit pursuant to chapter 33-16-01. 2. Any medium animal feeding operation where manure or process wastewater from the operation causes or is likely to cause water pollution or those that are located within one-fourth mile [.40 kilometer] of a stream or surface water that contains water, except for infrequent periods of severe drought, must apply for a state animal feeding operation permit pursuant to this chapter or a "no potential to pollute" determination pursuant to section 33-16-03.1-06. Waters completely contained on an owner's property and which do not combine or effect a junction with natural surface or underground waters are not included. 3. A small animal feeding operation shall apply for a state animal feeding operation permit pursuant to this chapter when the department has determined that manure or process wastewater from the operation causes or is likely to cause water pollution. 4. An animal feeding operation which stables or confines animals, other than the types of animals specified in the definition of medium animal feeding operation, shall apply for a state animal feeding operation permit pursuant to this chapter when the department has determined that manure or process wastewater from the operation causes or is likely to cause water pollution.	ND is keeping the duty to apply for all CAFO's. The Code of Federal Regulations was updated to change this part. The changes are in red text, the old language is grayed out and lined out. The ND requirement to keep permit requirements for all CAFOs is OK as it is at least as stringent as the federal regulation.

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122.23(d)(2) *Information to submit with permit application or notice of intent.* An application for an individual permit must include the information specified in § 122.21. A notice of intent for a general permit must include the information specified in §§ 122.21 and 122.28.	33-16-03.1-07		Addressed beginning line 6, above.
122.23(e) *Land application discharges from a CAFO are subject to NPDES requirements.* The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 122.42(e)(1)(vi)- (ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.			Cannot find this information in the ND submission.
122.23(e)(1) For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in § 122.42(e)(1)(vi) through (ix).	N/A		ND is keeping the duty to apply for all CAFO's. OK, there will not be unpermitted CAFOs.

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122.23(e)(2) Unpermitted Large CAFOs must maintain documentation specified in § 122.42(e)(1)(ix) either on site or at a nearby office, or otherwise make such documentation readily available to the Director or Regional Administrator upon request.	N/A		ND is keeping the duty to apply for all CAFO's. OK, there will not be unpermitted CAFOs.
122.23(f) *By when must the owner or operator of a CAFO have an NPDES permit if it discharges?* A CAFO must be covered by a permit at the time that is discharges. ~~*When must the owner or operator of a CAFO seek coverage under an NPDES permit?* Any CAFO that is required to seek permit coverage under paragraph (d)(1) of this section must seek coverage when the CAFO proposes to discharge, unless a later deadline is specified below.~~			40 CFR 122.23(f) was changed, the changes are in red text, the old text, which is no longer in effect is grayed out and lined out. ND has their requirements for permit coverage listed above beginning at line 6.
~~122.23(f)(1) *Operations defined as CAFOs prior to April 14, 2003.* For operations defined as CAFOs under regulations that were in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an NPDES permit as of April 14, 2003, and comply with all applicable NPDES requirements, including the duty to maintain permit coverage in accordance with paragraph (g) of this section.~~	N/A		
~~122.23(f)(2) *Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date.* For all operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by February 27, 2009.~~	N/A		
~~122.23(f)(3) *Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.* For a newly constructed CAFO and for an AFO that makes changes to its operations that result in its becoming defined as a CAFO for the first time after April 14, 2003, but is not a new source, the owner or operator must seek to obtain coverage under an NPDES permit, as follows:~~	N/A		

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~~122.23(f)(3)(i) For newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time CAFO commences operation;~~	N/A		
~~122.23(f)(3)(ii) For other operations (*e.g.* , resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; or~~	N/A		
~~122.23(f)(3)(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.~~	N/A		
~~122.23(f)(4) *New sources.* The owner or operator of a new source must seek to obtain coverage under a permit at least 180 days prior to the time that the CAFO commences operation.~~	N/A		
~~122.23(f)(5) *Operations that are designated as CAFOs.* For operations designated as a CAFO in accordance with paragraph (c) of this section, the owner or operator must seek to obtain coverage under a permit no later than 90 days after receiving notice of the designation.~~	N/A		
122.23(g) [Reserved] ~~*Duty to Maintain Permit Coverage.* No later than 180 days before the expiration of the permit, or as provided by the Director, any permitted CAFO must submit an application to renew its permit, in accordance with § 122.21(d), unless the CAFO will not discharge or propose to discharge upon expiration of the permit.~~	N/A		40 CFR 122.23(g), duty to maintain permit coverage is no longer in effect. The old language is grayed out and lined out. This section is now Reserved.
122.23(h) *Procedures for CAFOs seeking coverage under a general permit.*			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.23(h)(1) CAFO owners or operators must submit a notice of intent when seeking authorization to discharge under a general permit in accordance with § 122.28(b). The Director must review notices of intent submitted by CAFO owners or operators to ensure that the notice of intent includes the information required by § 122.21(i)(1), including a nutrient management plan that meets the requirements of § 122.42(e) and applicable effluent limitations and standards, including those specified in 40 CFR part 412. When additional information is necessary to complete the notice of intent or clarify, modify, or supplement previously submitted material, the Director may request such information from the owner or operator. If the Director makes a preliminary determination that the notice of intent meets the requirements of §§ 122.21(i)(1) and 122.42(e), the Director must notify the public of the Director's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in 40 CFR 124.11 through 124.13. The Director may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a hearing that differs from the time period specified in 40 CFR 124.10. The Director must respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary, require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit terms and conditions of the permit applicable to the CAFO.			Procedure for applying for the permit will be detailed in the permit itself. This is what is required in the regulations for general permits.

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122.23(h)(2) *For EPA-issued permits only.* The Regional Administrator shall notify each person who has submitted written comments on the proposal to grant coverage and the draft terms of the nutrient management plan or requested notice of the final permit decision. Such notification shall include notice that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.	N/A		NA
122.23(h)(3) Nothing in this paragraph (h) shall affect the authority of the Director to require an individual permit under § 122.28(b)(3).			Cannot find this in the submission.
~~122.23(i) *No Discharge Certification Option*~~	N/A		ND does not plan to offer the No Discharge certification. 40 CFR 122.23(i), the no discharge certification is no longer in effect. The old language is grayed out and lined out. You can remove this entire section from the crosswalk.
~~122.23(i)(1) The owner or operator of a CAFO that meets the eligibility criteria in paragraph (i)(2) of this section may certify to the Director that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge or propose to discharge is not required to seek coverage under an NPDES permit pursuant to paragraph (d)(1) of this section, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of paragraphs (i)(2) and (3) of this section, and subject to the limitations in paragraph (i)(4) of this section.~~	N/A		
~~122.23(i)(2) Eligibility Criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:~~	N/A		

Federal Requirement/ Citation	State Citation	State Requirement	Comment
~~122.23(i)(2)(i) The CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO must maintain documentation that demonstrates that:~~	N/A		
~~122.23(i)(2)(i)(A) Any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) through (viii);~~	N/A		
~~122.23(i)(2)(i)(B) Any part of the CAFO's production area that is not addressed by paragraph (i)(2)(i)(A) of this section is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and~~	N/A		
~~122.23(i)(2)(i)(C) The CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b);~~	N/A		
~~122.23(i)(2)(ii) The CAFO has developed and is implementing an up-to-date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:~~	N/A		
~~122.23(i)(2)(ii)(A) The elements of § 122.42(e)(1)(i) through (ix) and 40 CFR 412.37(c); and~~	N/A		
~~122.23(i)(2)(ii)(B) All site-specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to paragraph (i)(2)(i)(A) of this section; and~~	N/A		
~~122.23(i)(2)(iii) The CAFO must maintain documentation required by this paragraph either on site or at a nearby office, or otherwise make such documentation readily available to the Director or Regional Administrator upon request.~~	N/A		

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.23(i)(3) Submission to the Director. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the Director, by certified mail or equivalent method of documentation, a certification that includes, at a minimum, the following information:	N/A		
122.23(i)(3)(i) The legal name, address and phone number of the CAFO owner or operator (see § 122.21(b));	N/A		
122.23(i)(3)(ii) The CAFO name and address, the county name and the latitude and longitude where the CAFO is located;	N/A		
122.23(i)(3)(iii) A statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in paragraph (i)(2) of this section; and	N/A		
122.23(i)(3)(iv) The following certification statement: ''I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of 40 CFR 122.23(i). I have read and understand the eligibility requirements of 40 CFR 122.23(i)(2) for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by 40 CFR 122.23(i)(3). I also understand the conditions set forth in 40 CFR 122.23(i)(4), (5) and (6) regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate	N/A		

Federal Requirement/ Citation	State Citation	State Requirement	Comment
and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''; and	N/A		
122.23(i)(3)(v) The certification must be signed in accordance with the signatory requirements of 40 CFR 122.22.	N/A		
122.23(i)(4) Term of Certification. A certification that meets the requirements of paragraphs (i)(2) and (i)(3) of this section shall become effective on the date it is submitted, unless the Director establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in paragraph (i)(2) of this section.	N/A		
122.23(i)(5) Withdrawal of Certification.	N/A		
122.23(i)(5)(i) At any time, a CAFO may withdraw its certification by notifying the Director by certified mail or equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the Director. The CAFO does not need to specify any reason for the withdrawal in its notification to the Director.	N/A		
122.23(i)(5)(ii) If a certification becomes invalid in accordance with paragraph (i)(4) of this section, the CAFO must withdraw its certification within three days of the date on which the CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in paragraph (d)(1) of this section to seek permit coverage if it discharges or proposes to discharge.	N/A		

Federal Requirement/ Citation	State Citation	State Requirement	Comment
~~122.23(i)(6) Recertification. A previously certified CAFO that does not discharge or propose to discharge may recertify in accordance with paragraph (i) of this section, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:~~	N/A		
~~122.23(i)(6)(i) The CAFO had a valid certification at the time of the discharge;~~	N/A		
~~122.23(i)(6)(ii) The owner or operator satisfies the eligibility criteria of paragraph (i)(2) of this section, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future;~~	N/A		
~~122.23(i)(6)(iii) The CAFO has not previously recertified after a discharge from the same cause;~~	N/A		
~~122.23(i)(6)(iv) The owner or operator submits to the Director for review the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge in addition to submitting a certification in accordance with paragraph (i)(3) of this section; and~~	N/A		
~~122.23(i)(6)(v) Notwithstanding paragraph (i)(4) of this section, a recertification that meets the requirements of paragraphs (i)(6)(iii) and (i)(6)(iv) of this section shall only become effective 30 days from the date of submission of the recertification documentation.~~	N/A		
~~122.23(j) *Effect of certification.*~~	N/A		40 CFR 122.23(j) is no longer in effect, the old language is grayed out and lined out, you can remove this entire section from the crosswalk.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
~~122.23(j)(1) An unpermitted CAFO certified in accordance with paragraph (i) of this section is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to paragraphs (d)(1) and (f) of this section, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act section 301(a) prohibition against unauthorized discharges from point sources.~~	N/A		
~~122.23(j)(2) In any enforcement proceeding for failure to seek permit coverage under paragraphs (d)(1) or (f) of this section that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided in paragraph (i)(3) or (i)(6)(iv) of this section within at least five years prior to the discharge, or withdrew its certification in accordance with paragraph (i)(5) of this section. Design, construction, operation, and maintenance in accordance with the criteria of paragraph (i)(2) of this section satisfies this burden.~~	N/A		
40 CFR § 122.28 General permits.			
122.28 General permits (applicable to State NPDES programs, see § 123.25). * * * * * 122.28(b) * * * 122.28(b)(2) * * *			
122.28(b)(2)(ii) * * * Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in § 122.21(i)(1), including a topographic map. * * *			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.28(b)(2)(vii) A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in § 122.23(h).	33-16-01-12	33-16-01-12. Terms and conditions of national pollutant discharge elimination system permits. 1. The following discharges into the waters of the state are prohibited: a. Any radiological, chemical, or biological warfare agent or high-level radioactive waste. b. Any discharge into the navigable waters that the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation. c. Any discharge to which the regional administrator has objected in writing. d. Any discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Federal Water Pollution Control Act. e. Any discharge requiring certification under section 401 of the Federal Water Pollution Control Act and 40 Code of Federal Regulations, part 124.53, for which the department has neither granted nor waived the certification. f. Any discharge from a new source or new discharger which causes or contributes to the violation of applicable water quality standards, unless the owner or operator of the new source or new discharger demonstrates that: (1) The existing dischargers to the stream segment are subject to compliance schedules designed to bring the stream segment into compliance; and (2) Remaining pollutant load allocations are sufficient to allow for the discharge. 2. All national pollutant discharge elimination system permits shall contain, either expressly or by reference, the permit conditions listed in 21 40 Code of Federal Regulations, part 122.41, [40 CFR 122.41], which is incorporated into this chapter by reference. 3. National pollutant discharge elimination system permits shall contain all applicable permit conditions listed in 40 Code of Federal Regulations, part 122.42, [40 CFR 122.42], as it exists on February 12, 2003, which is incorporated into this chapter by reference. 4. National pollutant discharge elimination system permit conditions shall be established in compliance with 40 Code of Federal Regulations, part 122.43, [40 CFR 122.43], which is incorporated into this chapter by reference. 5	The ND code section in column B deals with terms and conditions of the permit, not general permit application requirements so this is not in the submission.
* * * * *			
40 CFR § 122.42 Additional conditions applicable to specified categories of NPDES permits.			
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Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e) *Concentrated animal feeding operations (CAFOs).* Any permit issued to a CAFO must include the requirements in paragraphs (e)(1) through (e)(6) of this section.	33-16-3.1-08 and NDLPDM Section 7	33-16-03.1-08. Facility requirements. 1. A livestock facility requiring a permit under this chapter must be located, designed, built, maintained, and operated to limit or prevent pollution of or the discharge of pollutants into waters of the state consistent with the North Dakota Livestock Program Design Manual, best professional judgment, best management practices, and pursuant to the requirements of North Dakota Century Code chapter 61-28, this chapter, and the facility's state animal feeding operation permit. 2. All concentrated animal feeding operations must be located, designed, built, maintained, and operated to limit or prevent pollution of or the discharge of pollutants into waters of the state consistent with the North Dakota Livestock Program Design Manual, best professional judgment, best management practices, and pursuant to the requirements of North Dakota Century Code chapter 61-28, North Dakota Administrative Code chapter 33-16-01, this chapter, and the operation's North Dakota pollutant discharge elimination system permit. 3. Nutrient management plan. A nutrient management plan must be developed and a copy maintained onsite by the owner or operator of any livestock facility that land applies manure, litter, or process wastewater to cropland or grassland and is required to obtain a permit or a no 10 potential to pollute determination pursuant to this chapter or chapter 33-16-01. These facilities must land apply manure litter or process wastewater in accordance with the current properly developed nutrient management plan. At a minimum the nutrient management plan must contain the following information: a. Description of the land to which an operator has access for applying manure or process wastewater, or both, and adequate information to demonstrate that manure or process wastewater, or both, will be applied at agronomic rates. The agronomic rate for nitrogen must not exceed the plant utilization rate for the cropping year. Phosphorous must not be applied at rates exceeding the recommendations based	There is no language similar to this in the ND code section submitted.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(1) *Requirement to implement a nutrient management plan.* Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this paragraph and applicable effluent limitations and standards, including those specified in 40 CFR part 412. The nutrient management plan must, to the extent applicable:	33-16-3.1-08-3	3. Nutrient management plan. A nutrient management plan must be developed and a copy maintained onsite by the owner or operator of any livestock facility that land applies manure, litter, or process wastewater to cropland or grassland and is required to obtain a permit or a no 10 potential to pollute determination pursuant to this chapter or chapter 33-16-01. These facilities must land apply manure litter or process wastewater in accordance with the current properly developed nutrient management plan. At a minimum the nutrient management plan must contain the following information: a. Description of the land to which an operator has access for applying manure or process wastewater, or both, and adequate information to demonstrate that manure or process wastewater, or both, will be applied at agronomic rates. The agronomic rate for nitrogen must not exceed the plant utilization rate for the cropping year. Phosphorous must not be applied at rates exceeding the recommendations based on either the North Dakota phosphorous index, the North Dakota state university extension service soil tests, or other risk assessment methods approved by the department. b. The proposed method and timing of land application of manure and process wastewater. c. The precautions that will be taken to: (1) Prevent manure and process wastewater from reaching waters of the state or areas where they have the potential to impact waters of the state; and (2) Minimize odors to residences and public areas where people are present during transport and land application of manure. d. Other information specified in the North Dakota Livestock Program Design Manual.	(e)(1) *Requirement to implement a nutrient management plan.* Number 3 in column C to left.
122.42(e)(1)(i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;			Numbers 6 and 7 under Facility requirements address (i).

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(1)(ii) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;			Cannot find this information in the ND submission.
122.42(e)(1)(iii) Ensure that clean water is diverted, as appropriate, from the production area;			Cannot find this information in the ND submission.
122.42(e)(1)(iv) Prevent direct contact of confined animals with waters of the United States;			Cannot find this information in the ND submission.
122.42(e)(1)(v) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;			Cannot find this information in the ND submission.
122.42(e)(1)(vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;			Cannot find this information in the ND submission.
122.42(e)(1)(vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;			Number 7.4 under Section 7, Nutrient Management Plans addresses (vii).
122.42(e)(1)(viii) Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and			Number 7.5 under NMPs addresses (viii).
122.42(e)(1)(ix) Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (e)(1)(i) through (e)(1)(viii) of this section.			Number 7.3, line 15 under NMPs addresses (ix).
122.42(e)(2) *Recordkeeping requirements.*			Number 7.7, Record Retention, in the NMP section.
122.42(e)(2)(i) The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:			7.7 (1.) and (2.)

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(2)(i)(A) All applicable records identified pursuant paragraph (e)(1)(ix) of this section;			Not complete because(e)(1)(ix) includes (i) - (viii), which is not completely covered in their submission.
122.42(e)(2)(i)(B) In addition, all CAFOs subject to 40 CFR part 412 must comply with record keeping requirements as specified in § 412.37(b) and (c) and § 412.47(b) and (c).			Their submission does not meet § 412.37(b) and (c) so does not meet the requirements of § 412.47 (b) and (c).
122.42(e)(2)(ii) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Director upon request.			7.7 (1.)
122.42(e)(3) *Requirements relating to transfer of manure or process wastewater to other persons.* Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.			7.7 (3.)
122.42(e)(4) *Annual reporting requirements for CAFOs.* The permittee must submit an annual report to the Director. As of December 21, 2020 all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, Subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law. The annual report must include:			40 CFR 122.42(e)(4) has been changed, the new, additional language is in red text. Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(4)(i) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.
122.42(e)(4)(ii) Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/ gallons);			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.
122.42(e)(4)(iii) Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.
122.42(e)(4)(iv) Total number of acres for land application covered by the nutrient management plan developed in accordance with paragraph (e)(1) of this section;			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(4)(v) Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.
122.42(e)(4)(vi) Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including, for each discharge, the date of discovery, duration of discharge, ~~time,~~ and approximate volume; and			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.
122.42(e)(4)(vii) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and			Their submission cites 33-16-03.1-09 for Recordkeeping and reporting requirements. However that section just says "Reports shall be submitted … in accordance with the schedule prescribed ..." So this does not meet the the requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(4)(viii) The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with paragraphs (e)(5)(i)(B) and (e)(5)(ii)(D) of this section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with paragraph (e)(5)(ii) of this section, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with paragraph (e)(5)(ii)(D) of this section, and the amount of any supplemental fertilizer applied during the previous 12 months;	33-16-3.1-09 NDLPDM Section 7	33-16-03.1-09. Recordkeeping and reporting requirements. 1. The operator of a livestock facility requiring a permit under this chapter shall record and maintain the following for a period of not less than three years: a. Any sampling, testing, and monitoring results as required by this chapter or by the department; b. Maintenance and inspection records for water pollution control structures; c. Reports and data required by this chapter, the North Dakota Livestock Program Design Manual, and the permit; and d. A copy of this permit. The department may request an extension of the record retention period if a facility has failed to comply with these rules or permit conditions or during the course of any unresolved litigation regarding the discharge of pollutants by the operation. The information shall be provided to department representatives upon request. A concentrated animal feeding operation must keep records as required under chapter 33-16-01. 2. Reports shall be submitted to the department in accordance with the schedule prescribed and on the appropriate forms supplied by the department or in a manner specified by the department if required as a condition of the state animal feeding operation permit or the North Dakota pollutant discharge elimination system permit for concentrated animal feeding operations or based on site-specific conditions. Information requested may include sampling, testing, and monitoring results; maintenance and inspection records; records related to facility operation; or nutrient management plan information or records. SECTION 7. NUTRIENT MANAGEMENT PLANS 7.1. Objective The objective of the Nutrient Management Plan is to ensure livestock manure, including bedding, litter, waste feed and process wastewater, and runoff from livestock areas is land applied to crop or grass land at a rate the nutrients will be utilized by the vegetation grown. The manure shall be handled in a manner so as not to impact waters of the state, exceed air quality standards while it	NDLPDM Section 7 requires the keeping of these records. 33-16-3.1-09 requires these records be provided upon request. Neither of those sections require an annual report nor state what information an annual report must contain so this is not in the submission.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5) *Terms of the nutrient management plan.* Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the Director to be necessary to meet the requirements of paragraph (e)(1) of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by paragraph (e)(1)(viii) of this section and, as applicable, 40 CFR 412.4(c), must include the fields available for land application; field-specific rates of application properly developed, as specified in paragraphs (e)(5)(i) through (ii) of this section, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application The terms must address rates of application using one of the following two approaches, unless the Director specifies that only one of these approaches may be used:	33-16-3.1-08-3	3. Nutrient management plan. A nutrient management plan must be developed and a copy maintained onsite by the owner or operator of any livestock facility that land applies manure, litter, or process wastewater to cropland or grassland and is required to obtain a permit or a no 10 potential to pollute determination pursuant to this chapter or chapter 33-16-01. These facilities must land apply manure litter or process wastewater in accordance with the current properly developed nutrient management plan. At a minimum the nutrient management plan must contain the following information: a. Description of the land to which an operator has access for applying manure or process wastewater, or both, and adequate information to demonstrate that manure or process wastewater, or both, will be applied at agronomic rates. The agronomic rate for nitrogen must not exceed the plant utilization rate for the cropping year. Phosphorous must not be applied at rates exceeding the recommendations based on either the North Dakota phosphorous index, the North Dakota state university extension service soil tests, or other risk assessment methods approved by the department. b. The proposed method and timing of land application of manure and process wastewater. c. The precautions that will be taken to: (1) Prevent manure and	Their submission does not meet the requirements of § 122.42(e)(1), so does not meet this requirement. They likely meet the requirements of § 412.4(c) but that is moot as they do not meet the other sections.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(i) *Linear approach.* An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:	NDLPDM Section 7	SECTION 7. NUTRIENT MANAGEMENT PLANS 7.1. Objective The objective of the Nutrient Management Plan is to ensure livestock manure, including bedding, litter, waste feed and process wastewater, and runoff from livestock areas is land applied to crop or grass land at a rate the nutrients will be utilized by the vegetation grown. The manure shall be handled in a manner so as not to impact waters of the state, exceed air quality standards while it is stored on site, and minimize odors to residences or public areas during land application. The department understands the Nutrient Management Plan is based on estimated realistic yield goals which can vary depending on weather conditions. Manure and soil sampling as well as record keeping, are necessary to verify proper land application of manure. 7.2. General Conditions 1. Manure, process wastewater and runoff shall be collected and stored in such a manner that it will not: a. Drain into surface waters, including lakes, streams, ditches, channels or other waterways that convey concentrated water flow; b. Detrimentally impact groundwater; or c. Cause air quality violations. Manure collection and storage shall comply with the design requirements of Section 5. 2. Manure shall be transported in a manner where it will not leak or spill on to public roads or into areas where it could enter surface or ground water. 3. Manure shall be land applied at rates where the nutrients will be used by the crop grown. Land application shall not impact waters of the state and precautions shall be used to minimize odors to residences or public areas where people may be present. 7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often	7.3 does not really meet this, line 6 requires a complete nutrient budget and line 9 requires recommended nutrient budget but neither requires rates of application. 7.5 requires application rates to meet nutrient requirements but does not require rates of application to be listed in pounds of N or P. The North Dakota Livestock Program Design Manual is cited a lot in the submission. Some of the code citations do reference that permittees must comply with the NDLPDM but the EPA some language stating the NDLPDM is enforceable.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(i)(A) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Director, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the Director for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.	NDLPDM Section 7.3	7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often manure is cleaned from the livestock areas and how and where manure may be temporarily stored; 3. An aerial photograph/map and a soil map of the site where manure is to be applied; 4. Fields where manure will be applied during frozen conditions shall be identified; 5. Current and/or planned plant production sequence or crop rotation; 6. Complete nutrient budget for nitrogen and phosphorous for the rotation or crop sequence that considers all potential sources of these nutrients; 7. Results of soil, plant, water, manure or organic by-product sample analysis. Nutrient planning shall be based on current soil and manure test results and developed in accordance with NDSU Extension Service guidance. Soil and manure tests are considered current if they are no older than three years for livestock facilities that require a Nutrient Management Plan or one year for CAFOs; 8. Quantify all nitrogen and phosphorus sources; 9. Recommended nitrogen and phosphorous rates, timing, method of application and incorporation; 10. The form of manure (liquid or solid) and the expected frequency of land application; 11. Location of sensitive areas or resources such as water ways, drainage ways, wellhead or source water protection areas, high water table areas, residences or public areas and the associated manure-handling or nutrient management restrictions; 12. Guidance for implementation, operation, maintenance and record keeping; 13. A field-specific assessment of the potential for nitrogen and phosphorous transport from the field to surface waters. The assessment shall address the form, source, amount, timing and	7.3 does not meet the first requirement of 122.42(e)(5)(i)(A), which is requiring "maximum application rates from manure, litter, and process wastewater for each year, for each crop, in chemical forms and pounds per acre, per year, for each field." So this does not meet our requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(i)(B) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or	NDLPDM Section 7.3	7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often manure is cleaned from the livestock areas and how and where manure may be temporarily stored; 3. An aerial photograph/map and a soil map of the site where manure is to be applied; 4. Fields where manure will be applied during frozen conditions shall be identified; 5. Current and/or planned plant production sequence or crop rotation; 6. Complete nutrient budget for nitrogen and phosphorous for the rotation or crop sequence that considers all potential sources of these nutrients; 7. Results of soil, plant, water, manure or organic by-product sample analysis. Nutrient planning shall be based on current soil and manure test results and developed in accordance with NDSU Extension Service guidance. Soil and manure tests are considered current if they are no older than three years for livestock facilities that require a Nutrient Management Plan or one year for CAFOs; 8. Quantify all nitrogen and phosphorus sources; 9. Recommended nitrogen and phosphorous rates, timing, method of application and incorporation; 10. The form of manure (liquid or solid) and the expected frequency of land application; 11. Location of sensitive areas or resources such as water ways, drainage ways, wellhead or source water protection areas, high water table areas, residences or public areas and the associated manure-handling or nutrient management restrictions; 12. Guidance for implementation, operation, maintenance and record keeping; 13. A field-specific assessment of the potential for nitrogen and phosphorous transport from the field to surface waters. The assessment shall address the form, source, amount, timing and	7.3 does not address this requirement. 7.5 says manure rates must not exceed recommendations for N and P based on the ND PI and that manure and other sources of N must not be applied at rates that exceed the recommended N rate for the year or the estimated N removal during that year. But does not require calculation of maximum amounts of manure, litter ... So it does not meet our requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii) *Narrative rate approach* . An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:	NDLPDM Section 7	SECTION 7. NUTRIENT MANAGEMENT PLANS 7.1. Objective The objective of the Nutrient Management Plan is to ensure livestock manure, including bedding, litter, waste feed and process wastewater, and runoff from livestock areas is land applied to crop or grass land at a rate the nutrients will be utilized by the vegetation grown. The manure shall be handled in a manner so as not to impact waters of the state, exceed air quality standards while it is stored on site, and minimize odors to residences or public areas during land application. The department understands the Nutrient Management Plan is based on estimated realistic yield goals which can vary depending on weather conditions. Manure and soil sampling as well as record keeping, are necessary to verify proper land application of manure. 7.2. General Conditions 1. Manure, process wastewater and runoff shall be collected and stored in such a manner that it will not: a. Drain into surface waters, including lakes, streams, ditches, channels or other waterways that convey concentrated water flow; b. Detrimentally impact groundwater; or c. Cause air quality violations. Manure collection and storage shall comply with the design requirements of Section 5. 2. Manure shall be transported in a manner where it will not leak or spill on to public roads or into areas where it could enter surface or ground water. 3. Manure shall be land applied at rates where the nutrients will be used by the crop grown. Land application shall not impact waters of the state and precautions shall be used to minimize odors to residences or public areas where people may be present. 7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often	Section 7 does not require manure, litter or process wastewater application rates to be expressed in tons, gallons or any other form of measure, so it does not meet our requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii)(A) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Director, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph (e)(5)(ii)(B) of this section); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Director for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the process wastewater to be land applied: Results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by paragraph (e)(1)(vii) of this section; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.	NDLPDM Section 7.3	7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often manure is cleaned from the livestock areas and how and where manure may be temporarily stored; 3. An aerial photograph/map and a soil map of the site where manure is to be applied; 4. Fields where manure will be applied during frozen conditions shall be identified; 5. Current and/or planned plant production sequence or crop rotation; 6. Complete nutrient budget for nitrogen and phosphorous for the rotation or crop sequence that considers all potential sources of these nutrients; 7. Results of soil, plant, water, manure or organic by-product sample analysis. Nutrient planning shall be based on current soil and manure test results and developed in accordance with NDSU Extension Service guidance. Soil and manure tests are considered current if they are no older than three years for livestock facilities that require a Nutrient Management Plan or one year for CAFOs; 8. Quantify all nitrogen and phosphorus sources; 9. Recommended nitrogen and phosphorous rates, timing, method of application and incorporation; 10. The form of manure (liquid or solid) and the expected frequency of land application; 11. Location of sensitive areas or resources such as water ways, drainage ways, wellhead or source water protection areas, high water table areas, residences or public areas and the associated manure-	Section 7 does not require manure, litter or process wastewater application rates to be expressed in tons, gallons or any other form of measure, so it does not meet our requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii)(B) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the Director for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in paragraph (e)(5)(ii)(A) of this section.	NDLPDM Section 7.3	7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often manure is cleaned from the livestock areas and how and where manure may be temporarily stored; 3. An aerial photograph/map and a soil map of the site where manure is to be applied; 4. Fields where manure will be applied during frozen conditions shall be identified; 5. Current and/or planned plant production sequence or crop rotation; 6. Complete nutrient budget for nitrogen and phosphorous for the rotation or crop sequence that considers all potential sources of these nutrients; 7. Results of soil, plant, water, manure or organic by-product sample analysis. Nutrient planning shall be based on current soil and manure test results and developed in accordance with NDSU Extension Service guidance. Soil and manure tests are considered current if they are no older than three years for livestock facilities that require a Nutrient Management Plan or one year for CAFOs; 8. Quantify all nitrogen and phosphorus sources; 9. Recommended nitrogen and phosphorous rates, timing, method of application and incorporation; 10. The form of manure (liquid or solid) and the expected frequency of land application; 11. Location of sensitive areas or resources such as water ways, drainage ways, wellhead or source water protection areas, high water table areas, residences or public areas and the associated manure-handling or nutrient management restrictions; 12. Guidance for implementation, operation, maintenance and record keeping; 13. A field-specific assessment of the potential for nitrogen and phosphorous transport from the field to surface waters. The assessment shall address the form, source, amount, timing and	Section 7 does not require listing of any alternative crops outside the general rotation so it does not meet the requirements.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii)(C) For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the Director, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.	NDLPDM Section 7.3	7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often manure is cleaned from the livestock areas and how and where manure may be temporarily stored; 3. An aerial photograph/map and a soil map of the site where manure is to be applied; 4. Fields where manure will be applied during frozen conditions shall be identified; 5. Current and/or planned plant production sequence or crop rotation; 6. Complete nutrient budget for nitrogen and phosphorous for the rotation or crop sequence that considers all potential sources of these nutrients; 7. Results of soil, plant, water, manure or organic by-product sample analysis. Nutrient planning shall be based on current soil and manure test results and developed in accordance with NDSU Extension Service guidance. Soil and manure tests are considered current if they are no older than three years for livestock facilities that require a Nutrient Management Plan or one year for CAFOs; 8. Quantify all nitrogen and phosphorus sources; 9. Recommended nitrogen and phosphorous rates, timing, method of application and incorporation; 10. The form of manure (liquid or solid) and the expected frequency of land application; 11. Location of sensitive areas or resources such as water ways, drainage ways, wellhead or source water protection areas, high water table areas, residences or public areas and the associated manure-handling or nutrient management restrictions; 12. Guidance for implementation, operation, maintenance and record keeping; 13. A field-specific assessment of the potential for nitrogen and phosphorous transport from the field to surface waters. The	Section 7.3 (5) and (6) require the crop rotation or planned plant production sequence and a complete nutrient budget that considers all sources. Section 7.4 covers phosphorus application and phosphorus index. Looking over § 7.3 I think they have this section covered.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii)(D) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph (e)(5)(ii)(A) of this section before land applying manure, litter, and process wastewater and must rely on the following data:	NDLPDM Section 7	SECTION 7. NUTRIENT MANAGEMENT PLANS 7.1. Objective The objective of the Nutrient Management Plan is to ensure livestock manure, including bedding, litter, waste feed and process wastewater, and runoff from livestock areas is land applied to crop or grass land at a rate the nutrients will be utilized by the vegetation grown. The manure shall be handled in a manner so as not to impact waters of the state, exceed air quality standards while it is stored on site, and minimize odors to residences or public areas during land application. The department understands the Nutrient Management Plan is based on estimated realistic yield goals which can vary depending on weather conditions. Manure and soil sampling as well as record keeping, are necessary to verify proper land application of manure. 7.2. General Conditions 1. Manure, process wastewater and runoff shall be collected and stored in such a manner that it will not: a. Drain into surface waters, including lakes, streams, ditches, channels or other waterways that convey concentrated water flow; b. Detrimentally impact groundwater; or c. Cause air quality violations. Manure collection and storage shall comply with the design requirements of Section 5. 2. Manure shall be transported in a manner where it will not leak or spill on to public roads or into areas where it could enter surface or ground water. 3. Manure shall be land applied at rates where the nutrients will be used by the crop grown. Land application shall not impact waters of the state and precautions shall be used to minimize odors to residences or public areas where people may be present. 7.3. Nutrient Management Plan Information Facilities requiring a Nutrient Management Plan pursuant to NDAC Chapter 33-16-01 or NDAC Chapter 33-16-03.1 shall include the following information in their current Nutrient Management Plan: 45 1. The type of livestock, number of days per year they are on site, an estimate of the volume of manure generated, and the information on which the estimate was based; 2. A description of the manure handling at the facility, including how often	This requirement is not met, there is no requirement to calculate maximum amounts of manure, litter, P.W. to me land applied.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii)(D)(1) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by paragraph (e)(5)(ii)(A) of this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Director; and	NDLPDM Section 7.5	7.5. Application Rates to Meet Nutrient Requirements 1. The manure application rate shall not exceed the recommendations for nitrogen and phosphorous based on either the North Dakota Phosphorous Index (PI), as developed by the NRCS, or NDSU Extension Service recommendations based on soil testing. 2. The PI allows manure and other sources of nutrients to be applied at rates to meet the nitrogen needs of a crop if the PI rating is low or medium. If the PI is high, it allows manure and other sources of nutrients to be applied at rates to meet the phosphorous removal in the crop biomass. If the PI is very high, it requires that no manure be applied to that field. Manure shall not be applied to fields where the soil test phosphorous exceeds 125 parts per million (ppm) (250 lbs per acre). 3. Manure and other sources of nitrogen must not be applied at rates that exceed: a. The recommended nitrogen application rate during the year of application; or b. The estimated nitrogen removal in harvested plant biomass for legumes during the year of application. 4. Nutrient Management Plans shall contain a field-specific assessment of the potential for nitrogen and phosphorous transport from the field. The assessment for phosphorous can be done using the phosphorous screening tool and soil tests, or the PI assessment. 5. If sewage sludge is applied, the accumulation of potential pollutants (including arsenic, cadmium, chromium, copper, lead, nickel, mercury, selenium and zinc) in the soil shall be monitored in accordance with 40 Code of Federal Regulations, Parts 403 and 503, and any applicable state and local laws or regulations.	They require a field specific assessment of potential for N and P transport from the field but not a field specific determination of the soil levels of N and P. For soil tests they are required yearly for CAFOs and three years for facilities requiring an NMP to be considered current [§ 7.4 (6.)].

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(5)(ii)(D)(2) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.	NDLPDM Section 7.4	7.4. Sampling and Testing of Manure and Soil 1. Soil samples shall be collected and prepared according to NDSU Extension Service guidance. Laboratories shall use testing procedures accepted by NDSU to perform soil sample analyses. 2. Soil testing shall include analyses for soil organic matter, nitrogen, and phosphorous. If there is concern about heavy metals or salts, the department may require testing of the soil for these materials. 3. Manure samples shall be collected and prepared according to NDSU Extension Service guidance or industry standard methods, as approved by the department. Manure testing shall include analyses for nitrogen, ammonia, and phosphorous. 4. If the operator uses feed or feed additives with high concentrations of salts or heavy metals, the department may require the manure be tested for these materials. The same is true if there is a reasonable expectation that the manure might contain elevated salts, metals or other potentially harmful materials. 5. Manure to be land applied shall be sampled from each manure storage structure that holds manure from separate types of livestock or from similar types of livestock in different phases of growth. 6. Livestock facilities identified by the department as needing nutrient management 47 plans shall have their manure and the soil where manure is being applied tested in accordance with items 1-5 once every three years. CAFOs shall have their manure and the soil where manure is being applied tested in accordance with items 1-5 each year.	It is probably really in § 7.3 (7). Section 7.4 goes over manure and soil sampling and testing requirements.
122.42(e)(6) *Changes to a nutrient management plan.* Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Director:	33-16-3.1-09	33-16-03.1-09. Recordkeeping and reporting requirements. 1. The operator of a livestock facility requiring a permit under this chapter shall record and maintain the following for a period of not less than three years: a. Any sampling, testing, and monitoring results as required by this chapter or by the	Specifc requirements will be listed in the permit itself, under the authority from NDAC 33-16-3.1-09 The EPA will need to know if the "specific requirements" will be at least as

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(6)(i) The CAFO owner or operator must provide the Director with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of paragraphs (e)(5)(i)(B) and (e)(5)(ii)(D) of this section are not subject to the requirements of paragraph (e)(6) of this section.	33-16-3.1-09	department; b. Maintenance and inspection records for water pollution control structures; c. Reports and data required by this chapter, the North Dakota Livestock Program Design Manual, and the permit; and d. A copy of this permit. The department may request an extension of the record retention period if a facility has failed to comply with these rules or permit conditions or during the course of any unresolved litigation regarding the discharge of pollutants by the operation. The information shall be provided to department representatives upon request. A concentrated animal feeding operation must keep records as required under chapter 33-16-01. 2. Reports shall be submitted to the department in accordance with the schedule prescribed and on the appropriate forms supplied by the department or in a manner specified by the department if required as a condition of the state animal feeding operation permit or the North Dakota pollutant discharge elimination system permit for concentrated animal feeding operations or based on site-specific conditions. Information requested may include sampling, testing, and monitoring results; maintenance and inspection records; records related to facility operation; or nutrient management plan information or records.	stringent as our requirements before ND starts issuing permits.
122.42(e)(6)(ii) The Director must review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR part 412, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the Director must notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the Director must determine whether such changes are substantial changes as described in	33-16-3.1-09		Cannot find anything similar to this in the ND submission.
122.42(e)(6)(ii)(A) If the Director determines that the changes to the terms of the nutrient management plan are not substantial, the Director must make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit	33-16-3.1-09		Cannot find anything similar to this in the ND submission.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(6)(ii)(B) If the Director determines that the changes to the terms of the nutrient management plan are substantial, the Director must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, hearing requests, and the hearing process if a hearing is held must follow the procedures applicable to draft permits set forth in 40 CFR 124.11 through 124.13. The Director may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from the time period specified in 40 CFR 124.10. The Director must respond to all significant comments received during the comment period as provided in 40 CFR 124.17, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the Director plan into the permit, the Director must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.	33-16-3.1-09 33-16-3.1-09		Cannot find anything similar to this in the ND submission.
122.42(e)(6)(iii) Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:	33-16-3.1-08 and 33-16-3.1-09	33-16-03.1-08. Facility requirements. 1. A livestock facility requiring a permit under this chapter must be located, designed, built, maintained, and operated to limit or prevent pollution of or the discharge of pollutants into waters of the state consistent with the North Dakota Livestock Program Design Manual, best professional judgment, best management practices, and pursuant to the requirements of North Dakota Century Code chapter 61-28, this chapter, and the facility's state animal feeding operation permit. 2. All concentrated animal feeding operations must be located, designed, built, maintained, and	Specifc requirements will be listed in the permit itself, under the authority from NDAC 33-16-3.1-08 and NDAC 33-16-3.1-09 The EPA will needto know if the "specific requirements" are at least as stringent as our requirements before a permit is issued.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.42(e)(6)(iii)(A) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing NPDES permit in accordance with the requirements of paragraph (e)(5) of this section, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;	33-16-3.1-08 and 33-16-3.1-09	operated to limit or prevent pollution of or the discharge of pollutants into waters of the state consistent with the North Dakota Livestock Program Design Manual, best professional judgment, best management practices, and pursuant to the requirements of North Dakota Century Code chapter 61-28, North Dakota Administrative Code chapter 33-16-01, this chapter, and the operation's North Dakota pollutant discharge elimination system permit. 3. Nutrient management plan. A nutrient management plan must be developed and a copy maintained onsite by the owner or operator of any livestock facility that land applies manure, litter, or process wastewater to cropland or grassland and is required to obtain a permit or a no 10 potential to pollute determination pursuant to this chapter or chapter 33-16-01. These facilities must land apply manure litter or process wastewater in accordance with the current properly developed nutrient management plan. At a minimum the nutrient management plan must contain the following information: a. Description of the land to which an operator has access for applying manure or process wastewater, or both, and adequate information to demonstrate that manure or process wastewater, or both, will be applied at agronomic rates. The agronomic rate for nitrogen must not exceed the plant utilization rate for the cropping year. Phosphorous must not be applied at rates exceeding the recommendations based on either the North Dakota phosphorous index, the North Dakota state university extension service soil tests, or other risk assessment methods approved by the department. b. The proposed method and timing of land application of manure and process wastewater. c. The precautions that will be taken to: (1) Prevent manure and process wastewater from reaching waters of the state or areas where they have the potential to impact waters of the state; and (2) Minimize odors to residences and public areas where people are present during transport and land application of manure. d. Other information specified in the North Dakota Livestock Program Design Manual. 4. Of the facilities identified in subsection 3, the following facilities must submit a copy	Cannot find in the ND submission.
122.42(e)(6)(iii)(B) Any changes to the field-specific maximum annual rates for land application, as set forth in paragraphs (e)(5)(i) of this section, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in paragraph (e)(5)(ii) of this section;	33-16-3.1-08 and 33-16-3.1-09		Cannot find in the ND submission.
122.42(e)(6)(iii)(C) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with paragraph (e)(5) of this section; and	33-16-3.1-08 and 33-16-3.1-09		Cannot find in the ND submission.
122.42(e)(6)(iii)(D) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S.	33-16-3.1-08 and 33-16-3.1-09		Cannot find in the ND submission.
122.42(e)(6)(iv) *For EPA-issued permits only* . Upon incorporation of the revised terms of the nutrient management plan into the permit, 40 CFR 124.19 specifies procedures for appeal of the permit decision. In addition to the procedures specified at 40 CFR 124.19, a person must have submitted comments or participated in the public hearing in order to appeal the permit decision.	N/A		
40 CFR § 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25)			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
122.62(a) * * *			
122.62(a)(17) *Nutrient Management Plans.* The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with §§ 122.23(h) and 122.28 is not a cause for modification pursuant to the requirements of this section.			Permit will define what is considered a modification
* * * * *			
40 CFR § 122.63 Minor modification of permits.			
122.63(a) * * *			
122.63(h) Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of § 122.42(e)(6).			Permit will define what is considered a minor modification
40 CFR 123 – STATE PROGRAM REQUIREMENTS			
40 CFR § 123.36 Establishment of technical standards for concentrated animal feeding operations			
123.36 If the State has not already established technical standards for nutrient management that are consistent with 40 CFR 412.4(c)(2), the Director shall establish such standards by the date specified in § 123.62(e).			The EPA will need documentation that ND has done this.

Federal Requirement/ Citation	State Citation	State Requirement	Comment
40 CFR 412 – CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) POINT SOURCE CATEGORY			
40 CFR § 412.1 General applicability			
412.1 This part applies to manure, litter, and/or process wastewater discharges resulting from concentrated animal feeding operations (CAFOs). Manufacturing and/or agricultural activities which may be subject to this part are generally reported under one or more of the following Standard Industrial Classification (SIC) codes: SIC 0211, SIC 0213, SIC 0214, SIC 0241, SIC 0251, SIC 0252, SIC 0253, SIC 0254, SIC 0259, or SIC 0272 (1987 SIC Manual).			Almost the entire § 412 needs to be done.
40 CFR § 412.2 General definitions			
412.2 As used in this part:			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.2(a) The general definitions and abbreviations at 40 CFR part 401 apply.			
412.2(b) *Animal Feeding Operation (AFO)* and *Concentrated Animal Feeding Operation (CAFO)* are defined at 40 CFR 122.23.			
412.2(c) *Fecal coliform* means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.			
412.2(d) *Process wastewater* means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.			
412.2(e) *Land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.			
412.2(f) *New source* is defined at 40 CFR 122.2. New source criteria are defined at 40 CFR 122.29(b).			
412.2(g) *Overflow* means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.2(h) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.			
412.2(i) *Ten (10)-year, 24-hour rainfall event, 25-year, 24-hour rainfall event,* and *100-year, 24-hour rainfall event* mean precipitation events with a probable recurrence interval of once in ten years, or twenty five years, or one hundred years, respectively, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or State rainfall probability information developed from this source.			
412.2(j) *Analytical methods.* The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1B at 40 CFR 136.3 are defined as follows:			
412.2(j)(1) *Ammonia (as N)* means ammonia reported as nitrogen.			
412.2(j)(2) *BOD5* means 5-day biochemical oxygen demand.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.2(j)(3) *Nitrate (as N)* means nitrate reported as nitrogen.			
412.2(j)(4) *Total dissolved solids* means nonfilterable residue.			
412.2(k) The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1A at 40 CFR 136.3 are defined as follows:			
412.2(k)(1) *Fecal coliform* means fecal coliform bacteria.			
412.2(k)(2) *Total coliform* means all coliform bacteria.			
40 CFR § 412.3 General pretreatment standards.			
412.3 Any source subject to this part that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.			
40 CFR § 412.4 Best management practices (BMPs) for land application of manure, litter, and process wastewater.			
412.4(a) *Applicability.* This section applies to any CAFO subject to subpart C of this part (Dairy and Beef Cattle other than Veal Calves) or subpart D of this part (Swine, Poultry, and Veal Calves).			
412.4(b) *Specialized definitions.*			
412.4(b)(1) *Setback* means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.			
412.4(b)(2) *Vegetated buffer* means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.4(b)(3) *Multi-year phosphorus application* means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.			
412.4(c) *Requirement to develop and implement best management practices.* Each CAFO subject to this section that land applies manure, litter, or process wastewater, must do so in accordance with the following practices:			
412.4(c)(1) *Nutrient Management Plan.* The CAFO must develop and implement a nutrient management plan that incorporates the requirements of paragraphs (c)(2) through (c)(5) of this section based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.			
412.4(c)(2) *Determination of application rates.* Application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management established by the Director. Such technical standards for nutrient management shall:			
412.4(c)(2)(i) Include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters; and			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.4(c)(2)(ii) Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the Director.			
412.4(c)(3) *Manure and soil sampling.* Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.			
412.4(c)(4) *Inspect land application equipment for leaks.* The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.			
412.4(c)(5) *Setback requirements.* Unless the CAFO exercises one of the compliance alternatives provided for in paragraph (c)(5)(i) or (c)(5)(ii) of this section, manure, litter, and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.			
412.4(c)(5)(i) *Vegetated buffer compliance alternative.* As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.4(c)(5)(ii) *Alternative practices compliance alternative.* As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.			
Subpart A Horses and Sheep			
40 CFR § 412.10 Applicability.			
412.10 This subpart applies to discharges resulting from the production areas at horse and sheep CAFOs. This subpart does not apply to such CAFOs with less than the following capacities: 10,000 sheep or 500 horses.			
40 CFR § 412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).			
412.12(a) Except as provided in 40 CFR 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT: There shall be no discharge of process waste water pollutants to navigable waters.			
412.12(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 10-year, 24-hour rainfall event for the location of the point source.			
40 CFR § 412.13 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).			
412.13(a) Except as provided in 40 CFR 125.30 through 125.32 and when the provisions of paragraph (b) of this section apply, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: There shall be no discharge of process waste water pollutants into U.S. waters.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.13(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.			
40 CFR § 412.15 New source performance standards (NSPS).			
412.15(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no discharge of process wastewater pollutants into U.S. waters.			
412.15(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.			
Subpart B Ducks			
40 CFR § 412.20 Applicability.			
412.20 This subpart applies to discharges resulting from the production areas at dry lot and wet lot duck CAFOs. This subpart does not apply to such CAFOs with less than the following capacities: 5,000 ducks.			
40 CFR § 412.21 Special definitions.			
412.21 For the purposes of this subpart:			
412.21(a) *Dry lot* means a facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.			
412.21(b) *Wet lot* means a confinement facility for raising ducks which is open to the environment, has a small number of sheltered areas, and with open water runs and swimming areas to which ducks have free access.			
40 CFR § 412.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.22(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the (BPT): BOD_5: Maximum daily 3.66 lb. (1.66 kg)/1,000 ducks BOD5: Maximum monthly average 2.0 lb. (0.91 kg)/1,000 ducks Fecal coliform: not to exceed MPN of 400 per 100 ml at any one time			
40 CFR § 412.25 New source performance standards (NSPS).			
412.25(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no discharge of process waste water pollutants into U.S. waters.			
412.25(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.			
40 CFR § 412.26 Pretreatment standards for new sources (PSNS).			
412.26(a) Except as provided in 40 CFR 403.7 and in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no introduction of process waste water pollutants to a POTW.			
412.26(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be introduced to a POTW.			
Subpart C Dairy Cows and Cattle Other Than Veal Calves			
40 CFR § 412.30 Applicability.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.30 This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR 122.23 and includes the following animals: mature dairy cows, either milking or dry; cattle other than mature dairy cows or veal calves. Cattle other than mature dairy cows includes but is not limited to heifers, steers, and bulls. This subpart does not apply to such CAFOs with less than the following capacities: 700 mature dairy cows whether milked or dry; 1,000 cattle other than mature dairy cows or veal calves.			
40 CFR § 412.31 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).			
412.31 Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:			
412.31(a) For CAFO production areas. Except as provided in paragraphs (a)(1) through (a)(2) of this section, there must be no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area.			
412.31(a)(1) Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into U.S. waters provided:			
412.31(a)(1)(i) The production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24- hour rainfall event;			
412.31(a)(1)(ii) The production area is operated in accordance with the additional measures and records required by§ 412.37(a) and (b).			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.31(a)(2) Voluntary alternative performance standards. Any CAFO subject to this subpart may request the Director to establish NPDES permit effluent limitations based upon site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline performance standards as provided by paragraph (a)(1) of this section.			
412.31(a)(2)(i) Supporting information. In requesting site-specific effluent limitations to be included in the NPDES permit, the CAFO owner or operator must submit a supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the Director. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site-specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff from a 25-year, 24-hour rainfall event. The technical analysis of the discharge of pollutants must include:			
(A) All daily inputs to the storage system, including manure, litter, all process waste waters, direct precipitation, and runoff.			
(B) All daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of waste water for use on cropland at the CAFO or transport off site.			
(C) A calculation determining the predicted median annual overflow volume based on a 25-year period of actual rainfall data applicable to the site.			
(D) Site-specific pollutant data, including N, P, BOD5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
(E) Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering paragraphs (a)(2)(i)(A) through (a)(2)(i)(D) of this section.			
412.31(a)(2)(ii) The Director has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the CAFO.			
412.31(a)(3) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.			
412.31(b) For CAFO land application areas. Discharges from land application areas are subject to the following requirements:			
412.31(b)(1) Develop and implement the best management practices specified in § 412.4;			
412.31(b)(2) Maintain the records specified at § 412.37(c);			
412.31(b)(3) The CAFO shall attain the limitations and requirements of this paragraph by December 31, 2006.			
40 CFR § 412.32 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).			
412.32 Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:			
412.32(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.31(a).			
412.32(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.31(b).			
40 CFR § 412.33 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).			
412.33 Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.33(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.31(a).			
412.33(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.31(b).			
40 CFR § 412.35 New source performance standards (NSPS).			
412.35 Any new point source subject to this subpart must achieve the following effluent limitations representing the application of NSPS:			
412.35(a) For CAFO production areas. The CAFO shall attain the same limitations and requirements as § 412.31(a)(1) and § 412.31(a)(2).			
412.35(b) For CAFO land application areas: The CAFO shall attain the same limitations and requirements as § 412.31(b)(1) and § 412.31(b)(2).			
412.35(c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.			
412.35(d) Any source subject to this subpart that commenced discharging after April 14, 1993, and prior to April 14, 2003, which was a new source subject to the standards specified in § 412.15, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in § 412.31(a) and (b).			
40 CFR § 412.37 Additional measures.			
412.37(a) Each CAFO subject to this subpart must implement the following requirements:			
412.37(a)(1) *Visual inspections.* There must be routine visual inspections of the CAFO production area. At a minimum, the following must be visually inspected:			
412.37(a)(1)(i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channelling contaminated storm water to the wastewater and manure storage and containment structure;			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.37(a)(1)(ii) Daily inspection of water lines, including drinking water or cooling water lines;			
412.37(a)(1)(iii) Weekly inspections of the manure, litter, and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker in paragraph (a)(2) of this section.			
412.37(a)(2) *Depth marker.* All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. In the case of new sources subject to effluent limitations established pursuant to § 412.46(a)(1) of this part, all open surface manure storage structures associated with such sources must include a depth marker which clearly indicates the minimum capacity necessary to contain the maximum runoff and direct precipitation associated with the design storm used in sizing the impoundment for no discharge.			Will be specified in the permit. The EPA will need to know if the requirement is as stringent as our before a permit is issued.
412.37(a)(3) *Corrective actions.* Any deficiencies found as a result of these inspections must be corrected as soon as possible.			
412.37(a)(4) *Mortality handling.* Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to § 412.37(a)(2) and approved by the Director are designed to handle mortalities.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.37(b) *Record keeping requirements for the production area.* Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by 40 CFR 122.21(i)(1) and 40 CFR 122.42(e)(1)(ix) and the records specified in paragraphs (b)(1) through (b)(6) of this section. The CAFO must make these records available to the Director and, in an authorized State, the Regional Administrator, or his or her designee, for review upon request.			
412.37(b)(1) Records documenting the inspections required under paragraph (a)(1) of this section;			
412.37(b)(2) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker under paragraph (a)(2) of this section;			
412.37(b)(3) Records documenting any actions taken to correct deficiencies required under paragraph (a)(3) of this section. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction;			
412.37(b)(4) Records of mortalities management and practices used by the CAFO to meet the requirements of paragraph (a)(4) of this section.			
412.37(b)(5) Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;			
412.37(b)(6) Records of the date, time, and estimated volume of any overflow.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.37(c) *Recordkeeping requirements for the land application areas.* Each CAFO must maintain on-site a copy of its site-specific nutrient management plan. Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by § 412.4 and 40 CFR 122.42(e)(1)(ix) and the records specified in paragraphs (c)(1) through (c)(10) of this section. The CAFO must make these records available to the Director and, in an authorized State, the Regional Administrator, or his or her designee, for review upon request.			
412.37(c)(1) Expected crop yields;			
412.37(c)(2) The date(s) manure, litter, or process waste water is applied to each field;			
412.37(c)(3) Weather conditions at time of application and for 24 hours prior to and following application;			
412.37(c)(4) Test methods used to sample and analyze manure, litter, process waste water, and soil;			
412.37(c)(5) Results from manure, litter, process waste water, and soil sampling;			
412.37(c)(6) Explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director.			
412.37(c)(7) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;			
412.37(c)(8) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;			
412.37(c)(9) The method used to apply the manure, litter, or process wastewater;			
412.37(c)(10) Date(s) of manure application equipment inspection.			
Subpart D Swine, Poultry, and Veal Calves			
40 CFR § 412.40 Applicability.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.40 This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR 122.23 and includes the following animals: swine; chickens; turkeys; and veal calves. This subpart does not apply to such CAFOs with less than the following capacities: 2,500 swine each weighing 55 lbs. or more; 10,000 swine each weighing less than 55 lbs.; 30,000 laying hens or broilers if the facility uses a liquid manure handling system; 82,000 laying hens if the facility uses other than a liquid manure handling system; 125,000 chickens other than laying hens if the facility uses other than a liquid manure handling system; 55,000 turkeys; and 1,000 veal calves.			
40 CFR § 412.43 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).			
412.43 Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:			
412.43(a) For CAFO production areas.			
412.43(a)(1) The CAFO shall attain the same limitations and requirements as § 412.31(a)(1) through (a)(2).			
412.43(a)(2) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.			
412.43(b) For CAFO land application areas.			
412.43(b)(1) The CAFO shall attain the same limitations and requirements as § 412.31(b)(1) and (b)(2).			
412.43(b)s(2) The CAFO shall attain the limitations and requirements of this paragraph by December 31, 2006.			
40 CFR § 412.44 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).			
412.44 Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.44(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.43(a).			
412.44(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.43(b).			
40 CFR § 412.45 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).			
412.45 Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:			
412.45(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.43(a).			
412.45(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.43(b).			
40 CFR § 412.46 New source performance standards (NSPS)			
412.46 Any new source subject to this subpart must achieve the following effluent limitations representing the application of NSPS:			
412.46(a) For CAFO production areas. There must be no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area, subject to paragraphs (a)(1) through (a)(3) of this section.			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.46(a)(1) Any CAFO subject to this subpart may request that the Director establish NPDES permit best management practice effluent limitations designed to ensure no discharge of manure, litter, or process wastewater based upon a site-specific evaluation of the CAFO's open surface manure storage structure. The NPDES permit best management practice effluent limitations must address the CAFO's entire production area. In the case of any CAFO using an open surface manure storage structure for which the Director establishes such effluent limitations, "no discharge of manure, litter, or process wastewater pollutants," as used in this section, means that the storage structure is designed, operated, and maintained in accordance with best management practices established by the Director on a site-specific basis after a technical evaluation of the storage structure. The technical evaluation must address the following elements:			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(i) Information to be used in the design of the open manure storage structure including, but not limited to, the following: minimum storage periods for rainy seasons, additional minimum capacity for chronic rainfalls, applicable technical standards that prohibit or otherwise limit land application to frozen, saturated, or snow-covered ground, planned emptying and dewatering schedules consistent with the CAFO's Nutrient Management Plan, additional storage capacity for manure intended to be transferred to another recipient at a later time, and any other factors that would affect the sizing of the open manure storage structure.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(ii) The design of the open manure storage structure as determined by the most recent version of the National Resource Conservation Service's Animal Waste Management (AWM) software. CAFOs may use equivalent design software or procedures as approved by the Director.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.46(a)(1)(iii) All inputs used in the open manure storage structure design including actual climate data for the previous 30 years consisting of historical average monthly precipitation and evaporation values, the number and types of animals, anticipated animal sizes or weights, any added water and bedding, any other process wastewater, and the size and condition of outside areas exposed to rainfall and contributing runoff to the open manure storage structure.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(iv) The planned minimum period of storage in months including, but not limited to, the factors for designing an open manure storage structure listed in paragraph (a)(1)(i) of this section. Alternatively the CAFO may determine the minimum period of storage by specifying times the storage pond will be emptied consistent with the CAFO's Nutrient Management Plan.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(v) Site-specific predicted design specifications including dimensions of the storage facility, daily manure and wastewater additions, the size and characteristics of the land application areas, and the total calculated storage period in months.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(vi) An evaluation of the adequacy of the designed manure storage structure using the most recent version of the Soil Plant Air Water (SPAW) Hydrology Tool. The evaluation must include all inputs to SPAW including but not limited to daily precipitation, temperature, and evaporation data for the previous 100 years, user-specified soil profiles representative of the CAFO's land application areas, planned crop rotations consistent with the CAFO's Nutrient Management Plan, and the final modeled result of no overflows from the designed open manure storage structure. For those CAFOs where 100 years of local weather data for the CAFO's location is not available, CAFOs may use a simulation with a confidence interval analysis conducted over a period of 100 years. The Director may approve equivalent evaluation and simulation procedures.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.46(a)(1)(vii) The Director may waive the requirement of (a)(1)(vi) for a site-specific evaluation of the designed manure storage structure and instead authorize a CAFO to use a technical evaluation developed for a class of specific facilities within a specified geographical area.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(viii) Waste management and storage facilities designed, constructed, operated, and maintained consistent with the analysis conducted in paragraphs (a)(1)(i) through (a)(1)(vii) of this section and operated in accordance with the additional measures and records required by § 412.47(a) and (b), will fulfill the requirements of this section.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(1)(ix) The Director has the discretion to request additional information to support a request for effluent limitations based on a site-specific open surface manure storage structure.			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
412.46(a)(2) The production area must be operated in accordance with the additional measures required by § 412.47(a) and (b).			
412.46(a)(3) Provisions for upset/bypass, as provided in 40 CFR 122.41(m)-(n), apply to a new source subject to this provision.			
412.46(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.43(b)(1).			
412.46(c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.			
412.16(d) Any source subject to this subpart that commenced discharging after April 14, 1993, and prior to April 14, 2003, which was a new source subject to the standards specified in § 412.15, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in § 412.43(a) and (b).			

Federal Requirement/ Citation	State Citation	State Requirement	Comment
412.46(e) Any source subject to this subpart that commenced discharging after April 14, 2003, and prior to January 20, 2009, which was a new source subject to the standards specified in § 412.46(a) through (d) in the July 1, 2008, edition of 40 CFR part 439, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1).			Current design standards are sufficient to meet NSPS, no change is needed. EPA still needs to know what those standards are and how they meet the CFR requirement
40 CFR § 412.47 Additional measures.			
412.47(a) Each CAFO subject to this subpart must implement the requirements of § 412.37(a).			
412.47(b) Each CAFO subject to this subpart must comply with the record- keeping requirements of § 412.37(b).			
412.47(c) Each CAFO subject to this subpart must comply with the record- keeping requirements of § 412.37(c).			